holds a charge to be groundless it merely means that the charge is dismissed or quashed. In making the order to the accused it is sufficient to say "discharged" and nothing more and then set forth the reasons.

As to the effect of a discharge under the Criminal Procedure Code section 302(v) clearly provides that the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of the section, which bars the trial of a person who has been convicted or acquitted of the same offence.

For reasons which have been stated I find that the preceding president did not conduct the trial in the manner required by section 173 of the Criminal Procedure Code. The order of the preceding president is bad because it was not made in accordance with law and at a stage of a trial contrary to the requirements of law. In exercise of my revisionary powers I set it aside and direct that the trial before the succeeding president to proceed.

I shall leave it to the succeeding president whether to adopt the evidence that has been recorded by the preceding president or to recommence the trial, regard to be had to section 261 of the Criminal Procedure Code.

The application of the petitioner is therefore dismissed.

Application dismissed.

Solicitors: *David Marshall.*

KHO CHOON TEE v. SUPERINTENDENT OF LANDS & SURVEYS, THIRD DIVISION

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) and Ali F.J.) April 8, 1972]

[Kuching — Federal Court Civil Appeal No. 53 of 1971]

Land Laws — Acquisition of land — Assessment of market value — Whether to be based on "residual method" or "comparative sales" — Payment of interest — Land Code (Sarawak Cap. 81), s. 69.

This was an appeal against the decision of the learned High Court judge who had assessed the market value of certain land at $23,000 an acre.

By virtue of the provisions of the Land Code, the Government of Sarawak acquired a certain piece of land, about 3.261 acres in area, for a development project. Notice of intention to acquire the said land was published in the *Gazette* on October 27, 1967, which formed the relevant date for assessing the market value of the land.

At an inquiry held on May 16, 1969, the appellant/owner claimed a sum of $450,000. The respondent awarded the appellant a sum of $71,220 as compensation. Two methods of valuation were used: (a) the residual method and (b) comparative sales. The respondent adopted the latter.

The appellant objected to the award and asked for reference to the High Court. At the hearing thereof, the appellant reduced his claim to $161,000. The learned judge assessed, *inter alia*, the market value of the said land at $75,003 *i.e.*, $23,000 an acre.

On appeal, the question before the court was what, on the evidence, was the market value of the land, market value being defined as ".... the price which an owner willing but not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the said land."

Held: (1) the learned judge's assessment could not be sustained as he had not indicated on what comparable or on what method he had formed his assessment and must be set aside;

(2) the assessment should be based on comparative sales. Thus, after considering all the evidence and the advantages and drawbacks of the said land, the market value was to be assessed at $32,000 an acre. Therefore, the award for 3.261 acres comprised in the said land was to be increased to $104,320;

(3) interest was to be paid by the respondent in accordance with section 69 of the Land Code.

Cases referred to:-

(1) *Kailas Chandra* v. *Secretary of State* 17 Cal. L.J. 35.

(2) *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore* [1954] M.L.J. 69.

(3) *Khoo Peng Loong* v. *Superintendent of Lands and Surveys* [1966] 2 M.L.J. 156 at p. 158.

(4) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys* [1968] 1 M.L.J. 293 at p. 295.

(5) *Collector of Land Revenue* v. *Alagappa Chettiar; Collector of Land Revenue* v. *Ong Thye Eng* [1971] 1 M.L.J. 43 at p. 44.

(6) *Improvement Trust Bombay* v. *K. Karsandas* 10 Bom. L.R. 688.

(7) *U.P. Government* v. *H.S. Gupta* A.I.R. 1957 S.C. 202.

FEDERAL COURT.

C. T. Wong for the appellant.

Mohamed Jemuri bin Serjan (Assistant State Attorney General) for the respondent.

Ismail Khan, C.J. (Borneo): The Government of Sarawak acquired under the Land Code all that piece of land comprising Lot 109 Block 37 Sarikei Land District in area about 3.261 acres (hereinafter called "the land") in connexion with the development of Sarikei Bazaar.

Notice of the intention to acquire the land was published in the *Gazette* on 27th October 1967. This was the relevant date for the purpose of assessing the market value of the land.

At an inquiry held on 16th May 1969, the owner of the land (hereinafter called "the appellant") claimed a sum of $450,000. The Superintendent of Lands and Surveys (hereinafter called "the superintendent") awarded the appellant a sum of $71,220 as compensation, made up as follows:-

The land 3.261 acres at $20,000 per acre	$65,220
One wooden house about 6 years old, cocount trees	5,200
Expenses in connexion with removal, etc.	800
	$71,220

The appellant objected to the superintendent's award and asked for reference to the High Court. At the hearing thereof the appellant reduced his claim from $450,000 to $161,000. The learned judge assessed the market value of the land at $75,003, that is, $23,000 an acre. He confirmed the award for the wooden house at $5,200 and the expenses for removal

at $800 making a total of $81,003. In making this award, the learned judge agreed with both assessors.

This appeal is against the decision of the learned judge in assessing the market value of the land at $23,000 an acre.

The land is trapezoidal in shape. On the northern and western boundaries are road reserves. An unmetalled road accessible to motor traffic goes near the northern western corner of the land. A twenty-foot wide drain passes through the northern boundary of the land from the Nyelong, a navigable river. The land itself is separated from the river by a river bank reserve. It is low-lying, swampy and waterlogged subject to flooding and would require filling before use. It is held under a lease, an open title, that is, with no restrictive conditions. The lease is for a term of 99 years from 6th June 1939, and at the relevant date has 71 years to run before expiry. The quit rent is $4 a year.

The question before this court is what on the evidence is the market value of the land, market value being defined as "... the price which an owner willing but not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the said land." (*Kailas Chandra* v. *Secretary of State*[1] and *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore*[2]). Mr. Williams, a qualified valuer for the appellant, applied the residual method. Mr. Jee, the Government valuer, based his valuation on comparable sales. The superintendent adopted the Government valuer's valuation. Both valuers had considered the sales of land set out in the following table (hereinafter called "the table"): —

Sale No.	Title No.	Area (in acre)	Condition of Title	Year of Expiry	Date of Sale	Sale Price	Price p. a. excluding improvement
1	Lot 366 Blk. 36	0.38	Agricultural	2037	16. 1.67	$ 4,000	10,526.-
2	Lot 381 Blk. 36	0.28	NIL	2040	14. 3.67	5,000	17,857.-
3	Lot 384 Blk. 36	0.27	NIL	2040	29. 3.67	5,000	18,518.-
4	Lot 385 Blk. 36	0.27	NIL	2040	25. 3.67	5,000	18,518.-
5	Lot 309 Blk. 48	0.30	NIL	2035	4. 2.67	5,000	16,695.-
6	Lot 189 Blk. 48	4.61	Agricultural	2036	11. 1.67	41,500	9,020.-
7	Lot 353 Blk. 48	0.33	NIL	2036	19.12.66	4,000	12,121.-
8	Lot 353 Blk. 48	0.33	NIL	2036	2. 2.67	4,000	12,121.-
9	Lot 449 Blk. 48 (formerly part of Lot 75)	5.13	NIL	2036	3.11.67	80,000	15,594.-
10	Lot 431 Blk. 36	12,676 sq. ft.	Industrial	2025	26.8.65	11,500	39,520.-
11	Lot 432 Blk. 36	12,676 sq. ft.	Industrial	2025	26.8.65	12,100	41,580.-
12	Lot 433 Blk. 36	12,660 sq. ft.	Industrial	2023	6.9.63	6,300	21,650.-
13	Lot 434 Blk. 36	12,660 sq. ft.	Industrial	2033	6.9.63	5,200	19,588.-
14	Lot 435 Blk. 36	12,570 sq. ft.	Industrial	2033	6.9.63	9,300	32,180.-

Mr. Williams valued the land at $159,500. He arrived at a starting figure of 93 cents per square foot. He rejected the sales of the residential lots (Sales Nos. 1 to 9) as comparables. He preferred the sales of the industrial lots (Sales Nos. 10 to 14) as they are situate in the same zone as the land. He selected the two lots 431 and 432 sold in 1965 at 90 cents and 95 cents per square foot respectively. He took a figure of 93 cents per square foot. To that he added 5 cents per square foot for the lower annual quit rent, 2 cents for the longer term of the 99 year lease. He allowed 20 cents for the rising price from August 1965 to 1967. This would bring the price to $1.20 per square foot. He had prepared a plan for the subdivision of the land providing for 11 shoplots and 5 industrial lots each one half an acre in area.

The five industrial lots would cover an area of 101,765 square feet; the 11 lots for the shop sites 20,400 square feet; the back lanes would take up 6,200 square feet and a road reserve allowing for a width of 72 feet would take another 13,440 square feet. All these would account for the whole area of the land, 142,005 square feet.

He valued the shoplot at $5 per square foot on the basis of sales in the Sarikei Bazaar. He assessed the total value of the industrial and shophouse lots at $224,358. Out of that he deducted a sum of $68,858 for road-making, subdivision, survey, legal fees and developers' profits, which leaves the balance as the market value of the land, namely $159,500.

The proposed subdivision was attacked by both Mr. Cadbury, Assistant Director of Lands and Surveys and former Superintendent of Lands and Surveys, Third Division, Sarawak and the superintendent. They said the plan would not meet with their approval as it failed to take into account the need for:

1. A road reserve of 110 feet to connect it with Repok Road from Sungei Nyelong.
2. A major channel north of The Land using the existing 20-foot tidal drain.
3. A concrete wall along the northern boundary to keep out floods, and in the alternative, filling in of the north eastern portion.
4. A bridge or bridges across the tidal drain to provide access to the industrial sites.

No approval for the plan had been obtained from the Town Council.

The learned judge admitted the force of these criticisms. He rejected the appellant's assessment. I think this rejection was well founded as, apart from the criticisms of Mr. Cadbury and the superintendent, it was pointed out by the learned judge that under the Ordinance only 10 shoplots would be permitted, that is, on the assumption that the subdivision plan would be accepted. To provide for such lots it would be necessary to construct roads and allow for road reserves which would occupy an area exceeding the statutory tenth of the area of the whole land.

In *Khoo Peng Loong* v. *Superintendent of Lands and Surveys*,[3] the area required for roads and open spaces in respect of the development of land in Sibu with an area of .22 acres (9563 square feet) was said to be 2,383 square feet which would be 24% of the whole area.

Mr. Williams' plan allows only 19,640 square feet for the reserves. This would be only 14% of the area. Nor was there in the learned judge's view any demand in Sarikei for the type of shop lots for shopping facilities for industrial workers and residents. Sarikei is not the administrative headquarters of the Third Division. The district has an area of 684 square miles and in 1970 the population was only 34,649.

Having disposed of Mr. Williams' estimate of the market value, I turn now to the Government valuer's valuation which formed the basis of the superintendent's award. Mr. Jee gave evidence and put in his report. He adopted the comparative sales method. Lot 449 mentioned in the above table, in his opinion, afforded the most suitable basis for comparison with the land because of the similar topography, both lands being flat and low-lying. Lot 449 has an area of 5.63 acres and is larger than the other residential lots most of them under one acre. The Government acquired Lot 449 after negotiation with the owner at the price of $15,594. Basing his valuation on this figure he assessed the market value of the land in the sum of $20,000 per acre. He observed that this sum "reflected the added value of the unrestricted title." I was a little puzzled over this phrase in parenthesis.

As the comparison was made with Lot 449, which is held under an open title, why was it thought necessary to add a sum of $4,445 to $15,594, the market value for Lot 109. It seems the explanation is this. There were two references before the court, one in respect of the land (Lot 109) and the other in respect of a portion of Lot 1 (hereinafter called "the acquired land"). The acquired land is 3.821 acres in area, almost the same area as the land. It is held under a restricted title restricting its user only as an agricultural lot.

Mr. Jee valued it at $15,555 per acre which was the price paid for Lot 449 except for a difference of one dollar. The court accepted this sum as the market value of the acquired land. Obviously, Mr. Jee treated the sum of $15,555 as a starting point. As the acquired land was held under a restricted title, and the land (Lot 109) under an open one, a sum of $4,445 was added to the starting figure to reflect this difference in title. In taking the sum of $15,555 as his starting point, he had based it on the sale of Lot 449 which he had regarded as the best comparable.

He said that he could regard as comparable, land in a zone different from the land (Lot 109) and that he was not aware of any proposition to the contrary.

The learned judge, however, held that Lot 449 was not comparable as it is in the residential zone. I agreed with this finding. The land (Lot 109) is zoned for industrial purposes. There could, therefore, be no similarity. That the difference in zoning makes a substantial difference to the price is shown in the table.

With regard to the residential lots, —

Sale No. 2 (Lot 381) .28 acres was sold at $17,857 an acre.
Sale No. 3 (Lot 384) .27 acres was sold at $18,518 an acre.
Sale No. 4 (Lot 385) .27 acres was sold at $18,518 an acre.

These sales took place in the year 1967.

On the other hand, in the case of the industrial lots —

Sale No. 10 (Lot 431) .29 acres (12,676 square feet) was sold at $39,520 an acre.
Sale No. 11 (Lot 432) .29 acres was sold at $41,580 an acre.
Sale No. 12 (Lot 433) 12,660 square feet was sold at $12,650 an acre.
Sale No. 13 (Lot 434) 12,660 square feet was sold at $19,588 an acre.
Lot 435, 12,510 square feet was sold at $32,180 an acre.

Lots 431 and 432 were sold in 1965, and Lots 434 and 435 in 1963.

It is significant that the lowest price paid for an industrial Lot (434) sold in 1963 at $19,588 an acre was higher than the highest price of a residential Lot (384) sold in 1967 at $18,518 an acre.

All these lots, both residential and industrial, are almost similar in size. They are low-lying and flat and are in the same vicinity as the land. Despite the fact that each residential lot is held for a term of years, longer than that of any industrial lot, there is this marked disparity in price. Both the superintendent and Mr. Jee conceded that in Sarikei industrial lots would command higher prices.

Having applied the wrong criterion in arriving at his valuation, Mr. Jee's starting point at $15,555 cannot stand and his final figure of $20,000 an acre as the market value of the land (Lot 109) must also fall. As Lord Wilberforce said in the case of *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys*,[4] of the evidence of Mr. Carter, a valuer in that case:

"the critical portion of his evidence was that by which he arrived at the starting figure of $15,500; if that is successfully attacked, the basis of the final figures disappears."

It is not clear if in spite of his ruling against the selection of the sale of Lot 449 as a comparable, the learned judge had accepted Mr. Jee's method by which he arrived at his valuation of the land based on his starting figure of $15,555. The learned judge said:-

".... Mr. Jee is implying that Lot 449 is comparable with the subject lands notwithstanding the zoning differences. However, on page 3 of his report, Mr. Jee says: 'Considering all the above factors, I proceed to make my valuation as follows:—....' By this, Mr. Jee must be intended to mean that he has considered the subject lands, the sales of residential properties and industrial lots including Lot 449. I am satisfied that Mr. Jee has not relied entirely on the sale of Lot 449 to arrive at his market value at the material date."

The tenor of these observations would suggest that he did.

No doubt in preparing his valuation, Mr. Jee had to consider various factors such as the topography of the land, its area, title and the sales of the various lots set out in the table. But having committed himself to the comparable sales method, the point of importance is his selection of the basis of his comparison. He had certainly considered the sales of both the residential and the industrial lots (sales nos. 1 to 9 and sales nos. 10 to 14 respectively). These, however, he disregarded as indices of market value on the ground that they were rather small lots. He finally decided on the sale of Lot 449 (sale no. 9) as "the most favourable" comparable.

If then the learned judge had accepted Mr. Jee's initial figure of $15,555 then the wrong comparison with Lot 449 in arriving at this figure must vitiate the learned judge's assessment. Mr. Jee regarded as comparable Lot 449, which the learned judge said should be disregarded. On the other hand, if the learned judge had relied on some other comparable, he had not said so. Or if he had adopted some other method in forming his assessment, there is no indication of it in the judgment, in which event, he would have fallen into the error to use the language of Lord Wilberforce in the above case of "fixing a figure *ex vacuo* without a stated foundation."

It would not save the situation to introduce the assessment with the words "taking into account all the factors which should be taken into account." These words were used by Suffian J. (as he then was) in *Aik Hoe's* case, but as was pointed out in the said case:

"the finding came at the end of a long and detailed judgment which had set out, compared and analysed the available evidence of all sales and awards which could possibly be relevant. His figure must be taken to be based upon this analysis."

In that case, after an exhaustive review of all the sales, two lots emerged which were regarded as providing a guide to that figure.

I appreciate

"that land valuation inevitably involves an element of appreciation and impression, as well as some element of local knowledge. The findings of the trial court in such cases, particularly when supported by expert assessors with local knowledge should be approached with respect and not lightly disturbed."

(See *Aik Hoe's* case at page 294).

In *Collector of Land Revenue* v. *A.K.A.C.T.V. Alagappa Chettiar and Collector of Land Revenue* v. *Ong Thye Eng*,[5] Lord Diplock said of land valuation:

"As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong."

For reasons I have stated, the learned judge's assessment cannot be sustained and must be set aside. In the circumstances, I have to work out a fair assessment of the market value in the light of the evidence and relevant principles.

I base my assessment on comparative sales, that is on sales of land in the vicinity which on the whole enjoy the same condition of quality and situation as the land. But it would be difficult to get lands "precisely parallel in all circumstances" and no hard and fast rule can be laid down as to the allowance to be made for such differences. *Improvement Trust Bombay* v. *Karsandas*.[6] In town, it would not be easy to find out what these proper allowances should be and how they are to be calculated without the opinions of expert valuers with experience. (*Aggarawalla* on Acquisition of Land, 3rd Ed. p. 202).

In the instant case there are the two categories of land: (1) The residential lots; (2) The industrial lots. I have held against the residential as comparable. That leaves the industrial lots which, in my view, provide a fair basis of comparison. These are sales nos. 10 & 11 of Lots 431 and 432 respectively. They are nearer in point of time to the relevant date. They are sales in each case of the whole area comprised in the lot. Admittedly, they are smaller lots than the land, but are in the same vicinity and in the same zone.

As a general proposition it can be stated that the sale of a small lot is not to be compared with that of a larger one, but this is not an inflexible rule. The Supreme Court of India laid down this criterion that ordinarily it would be wrong to value large areas on the basis of small areas and *vice versa*. There may, however, be cases where this can be done with justice. (*U.P. Government* v. *H. S. Gupta*[7]).

It does not follow that Lot 109 with a larger area than either of the two industrial lots should be worth more. As Suffian J. said in *Aik Hoe's* case:

".... Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price per unit of area for a small parcel."

Both Mr. Williams and Mr. Jee agreed that residential Lot 449 (area 5.13 acres) is worth less per acre than either of the two Lots 384 and 385 (area .27 acres each). Mr. Williams estimated the difference in price at 20%. Mr. Jee placed it at 17%. The opinion is based on the data shown in the table. The price of each of the smaller lot is $18.518. The large lot is valued at $15,594.

Bearing in mind that the difference between each of the two Lots (384 and 385) and Lot 449 as regards

area and planned layout corresponds approximately to the difference between the two industrial lots and the land (Lot 109), it would not be altogether unrealistic to allow a difference in price between the small industrial lots and the land at a figure round about those suggested by the valuers.

Lot 431 was sold on 26th August 1965 at $39,520 an acre. On the same day Lot 432 was sold at $41,580. There is no evidence as to which sale preceeded the other. With the average of these sales as a basis and allowing for the deduction on the lines suggested by the valuers it is possible, in my view, to arrive at a more or less fair valuation.

This method did not commend itself to the learned judge when it was suggested by counsel for the appellant, for this reason that "it would be giving compensation for unrealised possibilities as if they were realised possibilities." The answer to this is that it is not so. It is a valuation on the basis of a comparison of a bigger lot with smaller ones with deductions based on the opinions of experienced valuers.

After considering all the evidence and the advantages which the land enjoys such as its title, as well as its drawbacks in the presence of the tidal drain, lack of accessibility and other relevant factors, I assess the market value of the land at $32,000 an acre. I am not allowing for a rise in price as there is no evidence of any sales of industrial lots after 1965. The evidence of a rise based on the sale of the undivided shares of Lot 435 is no evidence of a general trend.

My award for 3.261 acres comprised in the land is $104,320. To that must be added a sum of $5,200 for the wooden house thereon and a sum of $800 being removal expenses, making a total of $110,320.

I direct that interest be paid by the superintendent in accordance with section 69 of the Land Code. I make no order as to costs either here or in the court below.

Azmi L.P. and **Ali F.J.** concurred.

Appeal allowed.

Solicitors: *Yong & Wong.*

NG BEE & ANOR. v. COLLECTOR OF LAND REVENUE, KUALA PILAH

[O.C.J. (Wan Suleiman J., G.K. Kathiravelu and C.J. Sergeant, Assessors) April 14, 1972]

[Seremban — Land Reference No. 1 of 1964]

Land Laws — Compulsory acquisition — Compensation — Objection to award made by collector — Reference to court — Determination of market value — Costs — Land Acquisition Act, 1960, ss. 8, 12 and 51(1)(a).

This was an objection against the award of the respondent in respect of the compulsory acquisition of land, comprised in C.T. No. 4426, Lot Nos. 3740 and 3102, in the Mukim of Ulu Muar, District of Kuala Pilah, for the purpose of building a school.

A declaration under section 8 of the Land Acquisition Act, 1960 was duly published in the *Gazette* on June 12, 1962.

On November 7, 1962, the collector held an inquiry under section 12 of the said Act and awarded the sum of $5,000 per acre or $40,000 for the total of 8 acres acquired.

The court on a reference, had to determine what was the market value of the said land acquired on June 12, 1962. It was assisted by two assessors.

Held: (1) the award of $5,000 per acre was more than adequate for the land acquired, taking into account a rather remote building potential and any severance loss (in its building potential value) which might arise as a result of the acquisition, to the remaining land;

(2) since the amount of the court award did not exceed the sum awarded by the collector, the costs were to be paid by the applicants by virtue of section 51(1)(a) of the Land Acquisition Act.

Cases referred to:-

(1) *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore* [1954] M.L.J. 69.

(2) *Harish Chandar Neogy* v. *Secretary of State* 11 C.W.N. 876.

(3) *Bukit Raya Rubber Co. Ltd.* v. *Collector of Land Revenue, Klang* [1968] 1 M.L.J. 176.

LAND REFERENCE.

S. Krishnalingam for the applicant.

Suleiman bin Hashim (Legal Adviser, Negri Sembilan/Malacca) for the respondent.

Cur. Adv. Vult.

Wan Suleiman J.: This is an objection against the award of the Collector of Land Revenue, Kuala Pilah, in respect of the compulsory acquisition of land comprised in C. T. No. 4426, lot Nos. 3740 and 3102, in the mukim of Ulu Muar, District of Kuala Pilah, for the purpose of building a school.

A declaration under section 8 of the Land Acquisition Act, 1960 was duly published in the *Gazette* on 12th June, 1962 so that in the absence of any notification under section 4 of the Act, what this court has to determine is the market value of the land acquired on that date (See First Schedule, paragraph 1(1)(b)).

The collector held an inquiry under section 12 of the Act on November 7, 1962 and heard the testimony of only one expert, Inche Mohamed Ali bin Maidin, a first class licensed appraiser and valuer called by the applicants. I shall be referring in due course to this valuation, which the valuer called by the applicants in this court adopted *in toto*. Judging from the notes of inquiry alone, no other expert opinion appears to have been considered, though the appli-